

Appl. No. 10/626,805
Amdt. Dated 2-28-06
Reply to Office Action of 11-28-05

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application.

Applicant respectfully requests the examiner to reconsider the final rejection of present invention. In particular, the examiner states "Giannuzzi et al. was cited only to teach the curved portion and not the positioning of the curved portion" (see page 4 of the office action dated 11/28/2005). Applicant has reviewed the office action dated 5/26/05 and 11/28/05 and cannot find any indication that Giannuzzi was cited only to teach the curved portion and not the positioning of its curved portion. Applicant believes the examiner has never made an argument that the arrangement/rearrangement of essential working parts is within general skill in the art, as it relates to Applicant's position of its claimed arcuate end portion. Therefore, Applicant asserts the examiner has inappropriately made the present office action a final office action. This is the first time Applicant has been presented with the argument that it would have been obvious to position Giannuzzi's arcuate end portion within its hollow core of its masonry block, as claimed by the Applicant. Accordingly, Applicant asserts the examiner should not issue a final rejection.

Nevertheless, Applicant asserts the examiner has mischaracterized the Court's ruling regarding arrangement and rearrangement of essential working parts. In the cited case, the Court held the mere rearrangement of the essential working parts did not affect the ability of the invention to perform its intended function in a substantially similar manner. However, Giannuzzi cannot properly perform its intended function of providing a non-rotating toggle assembly if the position of its arcuate end portion is modified to sit within a hollow core of a masonry block, as claimed by the Applicant. Giannuzzi clearly teaches its arcuate end portion must necessarily be positioned behind a wall were its wings stretch out at a position well displaced from the inner surface of the wall (see FIG. 1 and abstract). Such a position is clearly not within a hollow core of a masonry block, as claimed by the Applicant. Furthermore, such an arrangement of Giannuzzi's arcuate end portion is not a mere rearrangement of its working parts because Giannuzzi necessarily requires its arcuate end portion to be positioned behind the wall to properly

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anchor its bolt and prevent longitudinal movement thereof (see abstract and FIG. 1).

Positioning Giannuzzi's arcuate end portion within a hollow core of a masonry block would be counter-intuitive and prevent one skilled in the art to perform Giannuzzi's intended function in a substantially similar manner.

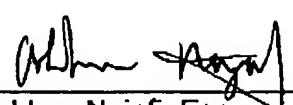
In view of these considerations, it is respectfully submitted that the rejection of the pending claims should be considered as no longer tenable with respect to the above mentioned arguments and claim amendments. All pending dependent claims necessarily include the recitations of their independent claims and therefore are also in condition for allowance.

Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Law Office of Ashkan Najafi, P.A.

By _____


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